

Docket No. 010188

Serial No. 10/000,247

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Wolfe, et al.

For: Method and Apparatus for Providing
Virtual Capacity to a Provider of Services

Serial No.: 10/000,247

Filed: October 29, 2001

Group Art Unit: 3623

AMENDED APPELLANT'S BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Board of Patent Appeals and Interferences

This following amended appeal brief is hereby submitted following Appellant's Notice of Appeal, filed on April 18, 2006 and in response to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37).

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Alexandria, VA 22313, on:

August 30, 2006

(Date of Deposit)

Cristina A. Pandolfo
(Name of Person Making Deposit)

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(Signature)

REAL PARTY IN INTEREST

The real party in interest is Qualcomm Incorporated, located at 5775 Morehouse Drive, San Diego, California 92121.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

STATUS OF THE CLAIMS

1. The total number of claims pending in this application is 20.
2. Claims 1, 4, 5, 41, 43, 44, 48 and 50-62 stand rejected
3. Claims 1, 4, 5, 41, 43, 44, 48 and 50-62 are on appeal.

STATUS OF AMENDMENT

An amendment was filed in the present case on July 11, 2006 since the issuance of the Examiner's final action of January 18, 2006.

SUMMARY OF CLAIM SUBJECT MATTER

Claims 1, 44, 48, and 59 are independent claims. There are no means plus function claims. A concise explanation of the subject matter of the independent claims is provided below:

Claim 1: This claim is directed to a method for arranging for the transporting of freight comprising the steps of receiving a request to transport freight (page 8, lines 37-38, through page 9, lines 5); determining that a carrier is not available to transport the freight (page 9, lines 7-10); transmitting a request to a third party to transport the freight (page 9, lines 12-16); determining that the freight can be transported by a third party vehicle (page 9, 10-12 and page 9, 35-38); assigning the freight to a third party (page 9, lines 14-16); reconfiguring a network management facility to redirect at least a portion of third party communications to a carrier dispatch center associated with the carrier (page 9, lines 19-21); and receiving at the third carrier dispatch center, freight status information (page 12, lines 37-38 and page 13, line 1).

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Claim 44: This claim is directed to an apparatus for arranging for the transportation of freight comprising a processor 304 (Fig. 3) for receiving a request (page 13, lines 11-20) and for instructing a network management facility to redirect at least a portion of third party communications (page 13, lines 1-15).

Claim 48: This claim is directed to a signal bearing medium tangibly embodying a program of machine-readable instructions (page 13, lines 21-31) executable by a digital processing apparatus to perform a method for arranging for the transportation of freight, the method comprising operations of receiving a request to transport freight (page 8, lines 37-38, through page 9, lines 5); determining that a carrier is not available to transport the freight (page 9, lines 7-10); transmitting a request to a third party to transport the freight (page 9, lines 12-16); determining that the freight can be transported by a third party vehicle (page 9, 10-12 and page 9, 35-38); assigning the freight to a third party (page 9, lines 14-16); reconfiguring a network management facility to redirect at least a portion of third party communications to a carrier dispatch center associated with the carrier (page 9, lines 19-21); and receiving at the third carrier dispatch center, freight status information (page 12, lines 37-38 and page 13, line 1).

Claim 59: This claim is directed to a method for the transporting of freight comprising transmitting a request for a third party, having a communications device, (page 10, lines 22-24) to transport the freight (page 9, lines 12-16), receiving at a first carrier dispatch center, an acceptance message (page 10, lines 28-30), transmitting an approval message in response to the acceptance message (page 10, lines 33-35), and temporarily reconfiguring a communication facility to allow communications between the communications device

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 4-5, 41, 43-44, 48 and 50-62 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hancock (U.S. Patent No. 6,785,718) in view of Koenck et al (U.S. Patent No. 6,749,122).

ARGUMENTSRejections under 35 U.S.C § 103(a)

Claims 1, 4-5, 41, 43-44, 48 and 50-62 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hancock (U.S. Patent No. 6,785,718) in view of Koenck et al (U.S. Patent No. 6,749,122).

Hancock concerns a logistics node for receiving a purchase order from a customer. The node selects an appropriate carrier to transport products and provides an interface which allows users to track the status of shipments without having to enter tracking codes that are unique to individual carriers. The interface also allows a user to change the priority status, for delivery, of products that have already been submitted for delivery.

Koenck et al pertains to a communications system which includes a number of data terminals linked by low frequency communication transponders to one another and a communications device that acts as a LAN controller. The communications device/LAN controller serves the function of a relay device by completing a communication pathway between a host computer and one of the data terminals. The host computer communicates with the communications device/LAN controller using a high power data transmission system.

Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966) sets forth three central factors to be considered in applying 35 U.S.C. §103: namely, the scope and content of the prior art; the differences between the prior art and the claims at issue; and the level of ordinary skill in the pertinent art. Secondary factors to be considered include objective evidence (e.g., commercial success, long felt need, etc. The Court emphasized that the secondary factors focus more attention on economic and motivational issues rather than technical considerations. *Id.* at 35-36.

35 U.S.C. 103 itself provides that the invention be evaluated “as a whole.” The Federal Circuit has attempted to prevent hindsight reasoning in determining obviousness by requiring that some teaching, suggestion or motivation to combine references be found where a combination of references forms the basis for finding obviousness. *Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 69 USPQ2d 1686, 1690 (Fed Cir. 2004).

Appellants’ submit that the requisite motivational incentive is lacking in the combination of Hancock with Koenck to achieve appellants’ invention. Hancock is primarily concerned with shipping articles using a logistics node that permits changing the delivery priority of articles that have already been delivered to a shipper. This is further borne out by the 12 claims of Hancock which all include either “modification logic for modifying the shipment in response to a user input” or “modifying the shipment in response to a user input.” Koenck reveals technology best suited for (and perhaps preempted by) tracking of articles sent by such services as UPS® or FedEx®. A package can be received at a service center and identification and tracking information can be entered into a server using low frequency handheld wireless scanner devices. Once out in the field, delivery data can be sent wirelessly using a high frequency transponder operated by a delivery driver. While Koenck may aid Hancock in implementing shipping priorities of packages in the field, the combination of these references does not suggest appellants’ invention. Absent a combination resulting in appellant’s invention, a motivation to achieve such a combination will likely not exist.

Specifically, and perhaps more importantly, “reconfiguring a network management facility to redirect at least a portion of third party communications to a carrier dispatch center associated with the carrier” as recited in claim 1 is neither taught, nor suggested by Hancock or Koenck whether taken singly or in combination. At page 4, paragraph 1, of the Office action dated January 18, 2006, it is admitted that “Hancock et al does not explicitly disclose (sic) ‘reconfiguring a network management facility to redirect at least a portion of third party communications to a carrier dispatch center associated with the carrier.’” Koenck is proffered in the January 18th Office action as being in the same field of endeavor and disclosing the concept of redirecting communication to a carrier by using a communication

controller for transferring received and updated status information on the shipped articles to a central data station while pointing to the abstract and col. 4, lines 27-40 of Koenck for support. The basis for rejection is inherently vague because no attempt is made to account for “reconfiguring a network management facility” as recited in claims 1, 44, 48, and 62. Claim 59 recites “temporarily reconfiguring a communications facility.” The import of the reconfiguring language is clearly set forth in appellants’ specification at, for instance paragraph 043. Once a third party carrier is identified for transporting goods in connection with another carrier being unable to take an assignment and after the third party carrier has accepted the assignment, the NMF redirects communications to the third party carrier dispatch center. This allows customers/ authorized users to receive and impart information to and from the chosen third party carrier. Further, it provides for the long-felt business need to establish communications between users and a third-party carrier addressing overflow/capacity problems. To state (according to the Jan. 18th Office action) that it would have been obvious to one of ordinary skill in the art to have modified the disclosures of Hancock to incorporate reconfiguring a network management facility to redirect a portion of communication...,as evidenced by the motivation for tracking articles, ignores a finding of requisite claim elements and interjects functionality and results not found in the combined cited art.

A network management facility (NMF) as recited in claims 1, 44, 48 and 62 is described at page 1, lines 29-31 of the specification as comprising “a number of network management computers (NMCs), each NMC” being “responsible for providing a communication path from the NMF to geographically dispersed vehicles in the communication system using a geosynchronous satellite.” There is no equivalent within Koenck of a network management facility. The only device serving as an intermediary in communications between a data station and data terminals is communication device 18. However, communications device 18 is not a network management facility and it does not comprise a number of network management computers.

Communication device 18 is described at column 9, lines 49-52 of Koenck, as having a “a first function as a relay device by completing a communication pathway between the host computer 11 and data terminals 33 through 39. However, this is the

normal path of communication, through the communication device 18, between the data terminals 33-39 and host computer 11. There is no redirection (e.g. redirection taking place where a different destination/origination of communication results). Further, there is no reconfiguration occurring within communication device 18. To rely on Hancock in view of Koenck as a basis for rejection under 35 U.S.C. §103(a) ignores both the definition of network management facility and imparts no significance whatsoever to the word “reconfiguring” in claim 1. Moreover, the spirit of claims 1, 44, 48 and 62 is clearly not captured by the combination of Hancock with Koenck. The cited references fail to address the problems solved by appellant’s invention such as those involving enabling communications between a customer and a carrier operating in conjunction with a third party dispatch center while solving a capacity/workload problem. The foregoing problems are addressed and solved by one following the noted claims along with claims dependent therefrom. It is submitted that the rejection of claims 1, 4-5, 41, 43-44, 48 and 50-62 is improper because the combination of Hancock and Koenck falls short of yielding the invention as claimed. Given that Hancock and Koenck fail to address the noted capacity/ workload problem, one of ordinary skill in the art would not be motivated to combine the teachings of the cited reference and neither would such a combination address the problems solved by appellants’ invention and accordingly claimed. Given these factors, the 35 U.S.C. §103(a) rejection is clearly improper under Federal Circuit tests and under the long established Supreme Court finding in *Graham v. John Deere* as well.

Claim 5 depends from claim 1 and it recites the third party as a second carrier dispatch center. There is no teaching or suggestion of a second carrier dispatch center in the cited art. Further, the second carrier dispatch center is not made obvious by any combination of the cited art.

Claim 41 depends from claim 1 and it recites the third party as comprising an individual equipped with a mobile communication terminal. There is no teaching or suggestion of this element, nor is this element made obvious by a combination of the cited art.

Contrary to the assertion made in the January 18th Office action with respect to claims 50-58 and 60-62, the claimed features are not standard practice in the communication art. Since these claims are dependent from claims including the

foregoing discussed limitations, the recited features must be considered along with the limitations recited in the claims from which they depend. The statement at page 4 of the January 18th Office action, last paragraph that the “claimed features are standard practice” and “it would have been obvious to a person of ordinary skill in the art ...to incorporate such features into Hancock and Koenck” is not supported by the combination of these references. Further, this Office action statement concerning standard practice is not identified as the taking of Official notice of this assertion. These statements are considered to be made without support and exception is taken to them along with a request to provide support therefore.


Claims dependent from claims 1, 44, 48 and 59 depend from claims submitted herein as patentably distinguishable over the cited. It is submitted that these dependent claims are likewise patentably distinguishable as they merely contain limitations in addition to the claims from which they depend.

CONCLUSION

In view of the foregoing, Appellants respectfully request that all presently outstanding rejections be reversed, and that all claims under appeal be allowed.

Respectfully submitted,

Dated: _____

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APPENDIX OF CLAIMS

1. A method for arranging for the transporting of freight comprising the steps of:
 - (a) receiving a request to transport the freight;
 - (b) determining that a carrier is not available to transport the freight;
 - (c) transmitting a request for a third party to transport the freight;
 - (d) determining that the freight can be transported by a third party vehicle of the third party carrier, the third party vehicle associated with a communications device;
 - (e) assigning the freight to the third party for transportation;
 - (f) reconfiguring a network management facility to redirect at least a portion of third party communications to a carrier dispatch center associated with the carrier; and
 - (g) receiving at the carrier dispatch center, freight status information transmitted by the communications device and redirected by the network management facility.
4. The method of Claim 1 wherein said third party comprises a vehicle equipped with a mobile communication terminal
5. The method of Claim 1 wherein said third party comprises a second carrier dispatch center.
41. The method of claim 1 wherein said third party comprises an individual equipped with a mobile communication terminal.
43. The method of claim 1 further comprising reconfiguring the network management facility for preventing subsequent communications between said communications device and said carrier dispatch center after the freight has been delivered.

44. An apparatus for arranging for the transportation of freight, comprising:

a processor for receiving a request to transport freight, for determining that a carrier cannot transport the freight, for generating a request for a third party to transport the freight, for determining that the third party can transport the freight, for generating a message assigning the freight to the third party, and for instructing a network management facility to redirect at least a portion of third party communications;

a transceiver for transmitting the request for a third party to transport the freight, for receiving a response from the third party, for transmitting the message assigning the freight to the third party and for receiving freight status information from a third party communications device, the freight status information redirected by the network management facility; and

memory for storing information pertaining to the availability of carrier vehicles to transport the freight.

48. A signal-bearing medium tangibly embodying a program of machine-readable instructions executable by digital processing apparatus to perform a method for arranging for the transportation of freight, said method comprising operations of:

- (a) receiving a request to transport the freight;
- (b) determining that a carrier is not available to transport the freight;
- (c) transmitting a request for a third party to transport the freight;
- (d) determining that the freight can be transported by a third party
- (e) assigning the freight to the third party for transportation
- (f) reconfiguring a network management facility to redirect at least a portion of third party communications to a carrier dispatch center associated with the carrier; and

- (g) receiving at the carrier dispatch center, freight status information transmitted by the communications device and redirected by the network management facility.

50. The method of claim 1 wherein the communications device comprises a mobile communications terminal, and the network management facility directs communications from the mobile communications terminal to a third party carrier dispatch center prior to reconfiguration of the network management facility.

51. The method of claim 1, wherein the communications device comprises a wireless communication device (WCD) configured to communicate with the network management facility via a wireless communication network.

52. The method of claim 1, wherein reconfiguring the network management comprises transmitting at least one message to the network management facility to update a memory within the network management facility to redirect transmissions from the communications device to the carrier dispatch center.

53. The method of claim 1, wherein reconfiguring the network management facility comprises instructing the network management facility to reformat transmissions for the communications device to a format used by the carrier dispatch center.

54. The method of claim 1 wherein reconfiguring the network management facility comprises enabling communications for the carrier dispatch center to the communications device.

55. The method of claim 1, wherein reconfiguring the network management facility comprises disabling communications between the communications device and a third party carrier dispatch center.

56. The method of claim 1, wherein transmitting the request for the third party to transport the freight comprises transmitting a request to a third party carrier dispatch center.

57. The method of claim 1, wherein the network management facility receives the freight status information from the communications device via a communications link comprising a satellite link.

58. The method of claim 1, wherein the network management facility receives the freight status information from the communications device via a communications link comprising a terrestrial communications link.

59. A method for arranging for the transporting of freight comprising the steps of:

- (a) transmitting a request for a third party to transport the freight;
- (b) receiving a first carrier dispatch center, an acceptance message indicating availability of a third party provider having a communications device to transport the freight;
- (c) transmitting an approval message to the third party provider in response to the acceptance message;
- (d) temporarily reconfiguring a communications facility to allow communications between the communications device and the first carrier dispatch center during at least a portion of the period that the third party provider transports the freight.

60. The method of claim 59, wherein transmitting the request for the third party to transport the freight comprises transmitting the request to a second carrier dispatch center, distinct from the first carrier dispatch center, the second carrier dispatch center transmitting the request to at least one device associated with the second carrier dispatch center.

61. The method of claim 59, wherein receiving acceptance message at the first carrier dispatch center comprises receiving the acceptance message transmitted by a distinct second carrier dispatch center.

62. The method of claim 59, wherein reconfiguring the communications facility comprises reconfiguring a network management facility to redirect communications from the communication device to the first carrier dispatch center instead of a distinct second carrier dispatch center.

EVIDENCE APPENDIX.

None.

RELATED PROCEEDINGS APPENDIX

None



PATENT

AF 2/10

Attorney Docket No.:	010188
Customer No.:	23696
Date:	August 30, 2006

In Re Application of:	Wolfe et al.		
Application No.:	10/000,247	Filed:	October 29, 2001
For: METHOD AND APPARATUS FOR PROVIDING VIRTUAL CAPACITY TO A PROVIDER OF SERVICES			

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith for filing is an Amended Appeal Brief in triplicate in the above identified application.

- ☐ Applicant is a small entity - a verified statement
☐ is enclosed.
☐ has already been filed.

In addition to the Amended Appeal Brief, the following documents are enclosed:

- ☒ Appendix of Claims
☒ Evidence Appendix
☒ Related Proceedings Appendix

☐ Fee check in the amount of \$0 is enclosed to pay for any claim and/or extension fees.

☒ It is believed by the appellant that no fees are due in connection with the filing of the Amended Appeal Brief.
If this is not the case, please charge the appropriate fees to Deposit Account No. 17-0026.

☒ Commissioner is hereby authorized to charge payment of any additional fees which may be required, or credit any overpayment, to said Deposit Account No. 17 - 0026. A duplicate of this sheet is enclosed.

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